

# Request for Proposals

## Feasibility Study: Collection and Composting of Source Separated Organics



**Proposals to be received  
by 4 p.m. on Monday,  
March 11, 2019**



Submit Proposals to:  
City of Rochester  
DES/Division of  
Environmental Quality (DEQ)  
30 Church Street, Room 300B,  
Rochester, New York 14614  
Attn: Shalini Beath,  
Energy & Sustainability Analyst  
[shalini.beath@cityofrochester.gov](mailto:shalini.beath@cityofrochester.gov)

RPF issued Feb. 11, 2019

## **REQUEST FOR PROPOSAL**

The City of Rochester is seeking proposals from qualified Consultants (“Consultant(s)”) to conduct a feasibility study and provide recommendations for implementation of collecting and composting source separated organics (SSO) as part of the City’s residential and commercial solid waste management program, (the “Project”). The consultant will assess the type and quantity of materials that can be composted, evaluate best options for collection containers, collection equipment, processing systems/equipment and procedures, and customer education to assist the City in developing a safe, cost-effective, environmentally and customer friendly and efficient composting program. The anticipated budget for the program is approximately \$80,000.

### **BACKGROUND**

The City of Rochester provides Solid Waste Management services including refuse and recycling collection for residential and commercial customers. Aside from refuse collection, the City has been providing a recycling program since the late 1980s and in 2016, converted to Mixed Recycling, offering larger wheeled collection containers, with every other week service that is a more efficient operation, more convenient for customers and better for our environment. During the fall season, the City collects leaves for composting at a facility operated by Monroe County and located on Avion Drive near the Monroe County EcoPark. In the spring and summer, the City provides this compost at no cost to residents to use for landscaping. While the City’s Mixed Recycling program and leaf composting program help to divert waste away from the landfill, the City is interested in understanding the feasibility of implementing an organics collection (for example, food waste) and composting program to further reduce the amount of waste sent to landfills and reduce GHG emissions.

The City has been taking action to reduce greenhouse gas emissions and energy use in its operations for several years, and formalized these actions in 2012 in its Municipal Operations Climate Action Plan. To begin to address community wide energy usage, the City participated with the New York Power Authority (NYPA) in the development of a City of Rochester Energy Master Plan, which was released in early 2015. The City developed the Rochester community-wide Climate Action Plan (CAP), which was endorsed by City Council in May 2017. The CAP’s goal is to reduce GHG emissions by 20% from 2010 levels by 2020 and by 40% from 2010 levels by 2030. Through actions related to energy efficiency, transportation, waste management, water and land use, the CAP lays a foundation to reduce the impacts of climate change and adapt to its unavoidable impacts. The CAP’s waste management strategy recommends the implementation of an organic materials collection program including food and yard waste as an action that will help to reduce the amount of waste sent to landfills and as a result, reduce landfill GHG emissions such as methane. Additionally, compost produced from the organics program is a useful end-product that can improve the quality of soil on city and residential properties and promote the expansion of flower and vegetable gardens that will benefit the community as well as wildlife.

## TIMELINE

Activity	Time	Date
RFP Release		2/11/19
Deadline for questions	4:00 p.m.	2/25/19
Responses to questions will be posted at <a href="http://www.cityofrochester.gov/bidandrfp/">http://www.cityofrochester.gov/bidandrfp/</a> Scroll down to “In this category” section and click on RFP-Feasibility Study: Collection & Composting of Source Separated Organics		3/1/19
Proposals due	4:00 p.m.	3/11/19

The dates shown above may be subject to change within the City of Rochester’s sole discretion and upon written notification as set forth herein.

### Communications

All communications by parties who intend to submit or have submitted a proposal in response to this RFP (“Respondents”), including any questions or requests for clarifications, submission of the proposal, requests for status updates about the proposal selection process and any other inquiries whatsoever concerning this RFP shall be sent, via email, to the following City staff person (“City Contact”):

Shalini Beath, Energy & Sustainability Analyst

[shalini.beath@cityofrochester.gov](mailto:shalini.beath@cityofrochester.gov)

City of Rochester

DES/Division of Environmental Quality (DEQ)

30 Church Street, Room 300B,

Rochester, New York 14614

No contact is permitted with any other City staff member with regard to this RFP during the RFP process unless specifically authorized in writing. Prohibited contact may be grounds for disqualification.

To ensure that all Respondents have a clear understanding of the scope and requirements of this RFP, the City will respond to all timely questions submitted via e-mail to the City Contact by the question deadline stated above. Questions and the responding answers will be sent via e-mail to all Respondents who have provided an e-mail address to the City Contact and will be posted on the City’s web page for this RFP. The City’s failure to timely respond or provide responses to any questions shall not delay or invalidate the City’s right to make a decision to award an agreement pursuant to this RFP.

The City will make every reasonable effort to keep Respondents informed about the RFP process.

Notifications about Timeline date changes, amendments to the RFP and other information about the RFP will be sent by e-mail to Respondents who have provided an e-mail address to the City Contact and will be posted on the City's website for this RFP. The City's failure to provide such information shall not delay or invalidate the City's right to make a decision to award an agreement pursuant to this RFP.

## SCOPE OF SERVICES

The City is seeking the services of a Consultant to perform the following services as part of a feasibility study on the development of a composting program that includes collecting and composting source separated organics (SSO) as part of the City's residential and commercial solid waste management program. The Respondent's proposal shall address each of the requested services, using the same identifying language, including any or section numbers as used in the RFP.

1. Evaluate types of compostable material the City could accept/collect (i.e. food scraps, yard waste, compostable food containers, meat, bones). If a waste characterization study is recommended, describe study method and include the cost of such a study as a separate item.
2. Evaluate types of collection containers appropriate for different customers. Composting program participants may include but are not limited to single- and multi-family residential customers, food service industry commercial customers, and small and large business commercial or institutional customers. Containers should be evaluated in terms of how they fit in the current collection system (operator and vehicle). Containers must be practical for customer use, safe and cost effective, designed to protect public health and reduce nuisance factors such as odor, pests or leaking.
3. Evaluate collection vehicles currently used by the City to collect solid waste and determine if they can be used for SSO collection. Consideration should be given to compacting and non-compacting vehicles, as well as front, over-the-top, side, and rear loading trucks requiring manual collection or collection with semi-automated or fully automated tippers. Consider whether a vehicle like a hybrid (split body) truck can be used to collect SSO alongside refuse or recyclables.
4. Evaluate collection methods and frequency of collection (curbside collection, drop-off, or a combination) in terms of ease of use and safety for participants and operators, and cost effectiveness. Consider staffing requirements, and maintenance and replacement of containers, vehicles and processing equipment. Solicit public feedback as appropriate.
5. Evaluate collection scheduling options. Consider peak yard waste months of October and November, as well as staffing and maintenance and replacement of equipment. Solicit public feedback as appropriate.
6. Evaluate processing equipment/systems to possibly be purchased and operated by the City. Include capital, operating and maintenance costs. Consider initial capacity requirements, and potential expansion. Processing equipment/systems should be evaluated in terms of operator safety, performance and impact to public health and the surrounding environment. Consider how the equipment/system will prevent or manage leachate/runoff, emissions and odors.
7. Determine space requirements for any recommended composting system. Consider vehicle traffic flow and room for expansion of processing capacity.

8. Review and benchmark best practices from other cities involved in SSO collection and processing. Focus on medium-to-large cities in the northeast region with on-street parking and similar weather conditions.
9. Evaluate and recommend the best approach for the City to implement a composting program. Include options for a pilot, phased roll-out, and potential for citywide expansion.
10. Evaluate and recommend all procedures in terms of overall safety and efficiency for customers and operators, and environmental impacts (greenhouse gas emissions reductions).
11. Identify any regional businesses that will accept SSO, and provide cost information for transportation and processing of SSO.
12. Identify potential end uses for resulting compost/digestate/biosolids/biogas/leachate or other by-products, with a focus on potential revenue sources.
13. Identify all local, state and federal regulations related to on-site processing of SSO and the end use, disposal or sale of resulting compost/digestate/biosolids/biogas/leachate or other by-products.
14. Identify metrics to demonstrate the effectiveness composting program, and source(s) of data required. Include greenhouse gas (GHG) emissions calculations of GHG emissions reductions as a result of the composting program (include collection, transportation, processing).
15. Evaluate methods of customer education and communication. Solicit public feedback as appropriate
16. Identify potential grant opportunities to help fund the compost program.

### **Project Deliverables**

1. Meeting summaries and copies of materials distributed
2. Summary of findings from case studies and background research
3. Draft and final feasibility report incorporating feedback from City staff and the public
4. Draft and final recommended plan of approach for implementing collection and processing of SSO incorporating feedback from City Staff
5. Recommended timeline for project implementation
6. Outreach strategy, draft materials and summary of customer feedback (if feedback is solicited)
7. Ten (10) hard copies and an electronic copy of the final feasibility and implementation reports

The City will review all project plans, review and approve draft reports, be included in meetings and coordination with other parties, and will provide information related to City operations, etc.

## PROPOSAL PREPARATION AND SUBMISSION PROCESS

Proposals must be postmarked or received by the City no later than 4 p.m. on March 11, 2019.

Five (5) hard copies and an electronic copy of the proposal must be submitted to:

City of Rochester  
DES/Division of Environmental Quality (DEQ)  
30 Church Street, Room 300B,  
Rochester, New York 14614  
Attn: Shalini Beath, Energy & Sustainability Analyst  
[shalini.beath@cityofrochester.gov](mailto:shalini.beath@cityofrochester.gov)

This RFP is designed to facilitate the evaluation and selection of a Consultant that is best able to achieve the City's objectives. The proposal shall contain a table of contents. All pages shall be numbered and major sections and all attachments shall be referenced in the table of contents. In order to enable the City to effectively review the information contained in the proposals, proposals shall reference the numbered and lettered sections of the RFP. The response to each section shall be clearly indicated and addressed or an explanation provided for why the Respondent is not submitting a proposal for a specific section or requirement of the RFP. If desired, the proposal may include an executive summary of no more than two pages.

Each proposal shall be signed by an individual authorized to enter into and execute contracts on the Respondent's behalf. Unless otherwise specified in its proposal, Respondent represents that it is capable of meeting or exceeding all requirements specified in this RFP.

Submission of a proposal shall be deemed authorization for the City to contact Respondent's references. Evaluation of proposals will be conducted by the City based on information provided in the Respondent's proposals and on such other available information that the City determines to be relevant. The evaluation of proposals may include an on-site assessment, meetings with authorized personnel, and may involve the use of a third-party consultant.

The Respondent selected by the City will be required to enter into a Professional Services Agreement (PSA) with the City (see Attachment A, the City's standard PSA form). The establishment of a PSA is contingent upon approval by City Council for all Agreements in excess of \$10,000 or for a period of more than one year and upon the availability of funds for such an agreement. Unless otherwise stated in the proposal, the Respondent's response to this RFP shall be deemed its acceptance of the terms of this PSA. (Note: Attention is directed to the City's Living Wage requirements and MWBE and Workforce Utilization Goals)

Respondents shall provide sufficient information in their written proposals to enable the City review team to make a recommendation to the Mayor. The City reserves the right to invite any or all Respondents to an interview to discuss their proposal. Any expenses resulting from such an interview will be the sole responsibility of the Respondent. The City is under no obligation to select any of the

responding Respondents or to conduct the Project described herein. The City may amend or withdraw the RFP at any time, within its sole discretion. The City shall have no liability for any costs incurred in preparing a proposal or responding to the City's requests with respect to the proposal.

## PROPOSAL CONTENT

The proposal should include the following information in the order specified:

- A. Project Statement: A Project narrative that describes the Respondent's understanding of the City's needs and the unique value the Respondent will bring to the process.
- B. Description of Services: Methodology the Respondent will use to perform the services required in this RFP. The proposal should address, in detail, the tasks as described in the Scope of Services, identified by numbered sections.
- C. Respondent's Qualifications: Information about the Respondent and its qualifications for this Project. Include information about prior engagements similar to that being solicited herein by the City. Documented evidence of the Respondent's capacity to perform the work, including references, contact names, and phone numbers.
- D. Project Budget: An itemized budget including staff hours and billing rates which addresses each of the tasks identified in the Scope of Services.
- E. Project Personnel: The name and resume of the Respondent's lead person for the Project. Names, resumes, and roles of all staff who will be involved in the Project. Provide data on the diversity of Respondent's overall workforce, including total number of employees, and percentages of minorities and females employed.
- F. Subcontractors: Names, resumes, and roles of sub-contractors, associates, or any non-employees who will be involved in the Project.
- G. Rochester Presence: Information about Respondent's presence in the City of Rochester and/or any collaborative relationships with local firms that are to be formed for this Project.
- H. MWBE: Statement as to whether or not the Respondent is a bona fide MWBE firm, will use bona fide MWBE subcontractors and the percentage of the workforce utilized to perform the work of this contract who will be either Minority (M) or Women (W), including both the Consultant's workforce and that of any subcontractors who will be utilized. Please complete and submit Attachment A-MWBE Utilization Plan and Attachment B - Workforce Staffing Plan along with the proposal.

## EVALUATION CRITERIA

The following is a summary of the proposal evaluation criteria. It is within the City's sole discretion to determine the value assigned to each of these criteria.

1. Proposal: The Respondent's comprehension of the needs of the City as demonstrated by its description of its approach to the elements listed in the Scope of Services section of this RFP.
2. Experience: The Respondent's relevant experience in providing the same or similar services.
3. Cost: The total cost of the Respondent's proposal is important to the City, however, based on the evaluation of the other criteria, the City will not necessarily select the lowest bidder.
4. References: Evaluation of the Respondent's work for previous clients receiving similar services to those proposed in this RFP.
5. Commitment of key principals to the Project: Demonstration of availability of senior-level staff or associates to be assigned to this Project to ensure depth, accountability, and diversity of perspective.
6. MWBE and Workforce Goals: The City of Rochester desires to encourage minority and women owned (MWBE) businesses to participate in opportunities to enter into PSAs with the City and to encourage minorities and women in the workforce. Pursuant to Ordinance No. 2018-54, the City has a goal that 30% of the aggregate annual contract awards for professional service contracts over \$10,000 be awarded to minorities (M) (15%) and women (W) (15%). The City has also established minority workforce goals of 20% M and 6.9% W for professional services consulting contracts. For more information please see <http://www.cityofrochester.gov/mwbe>.

Respondents shall be awarded MWBE bonus weighting as follows:

- a. The City will give preference to Consultants who are New York State certified MWBEs. Consultants who meet this requirement shall receive **an additional weighting of 10%**.
- b. The City will give preference to Consultants who utilize state certified MWBE subcontractors with bona fide offices and operations in the Empire State Development Finger Lakes Region, which includes the following counties: Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming and Yates. State-certified MWBEs from outside the Region may be counted if there are insufficient businesses in the Region to perform the specialized work or consulting services required. If one or more MWBE subcontractors will perform 10% to 20% of the work of the contract – measured



as either a percent of the total contract amount or as a percent of the total full-time-equivalent labor hours budgeted for this project, the consultant shall receive **an additional weighting of 5%**. If MWBE subcontractors will perform more than 20% of the work of the contract, the Consultant shall receive an **additional weighting of 10%**.

- c. Respondents shall provide sufficient documentation with their proposal to support the additional preference weighting as an MWBE Consultant or for use of MWBE subcontractors. If one or more MWBE subcontractors are proposed, they must be named and the size of the subcontract identified. If selected, the Respondent shall submit an MWBE Utilization Plan on the City's form for approval by the MWBE Officer. Once approved, the Utilization Plan shall be incorporated into the PSA.
  - If the total amount of a PSA is increased by 5% or more at any time during the term of the PSA, the Consultant shall submit a revised MWBE Utilization Plan for approval by the MWBE Officer. The MWBE Officer may also issue a revised MWBE Utilization Plan for unforeseen changes in the availability of MWBE subcontractors during the term of the PSA.
- d. The City will give preference to Consultants who meet or exceed the City's workforce goals, which are: 20% M and 6.9% W. Consultants who demonstrate that their and/or their subcontractors' workforce on this Project meets or exceeds these goals shall receive an **additional weighting of 10%**. If selected, the Respondent shall submit a Workforce Staffing Plan on the City's Form for review by the MWBE Officer. Once reviewed, the Workforce Staffing Plan shall be incorporated into the PSA. The calculated percentages of workforce utilization shall be based on actual hours worked and billed over the term of the project. The final determination of a workforce goals accomplished during the contract shall be based on hours reported in the workforce utilization reports.
- e. If selected, the Respondent shall provide MWBE utilization and subcontractor/supplier payment certification and/or workforce utilization reports on the City's forms. These reports shall be submitted with each invoice or as otherwise requested by the MWBE Officer.
- f. A failure to submit the required subcontractor/supplier payment certification and/or workforce utilization reports shall constitute a default in the performance of the Agreement subject to potential termination for default by the City. In addition, if the selected Respondent fails to meet the most recent MWBE Utilization Plan and/or Workforce Staffing Plan, for which additional weight was awarded by the end of the PSA, such failure may result in disqualification from award of future contracts with the City.
- g. Summary of additional evaluation weighting points for MWBE and Workforce Goals:

<b>Category of Additional Evaluation Points</b>	<b>Additional Weight Awarded</b>
Respondent is New York State Certified MWBE	10%
Utilize MWBE Subcontractors for 10-20% of work	5%
Utilize MWBE Subcontractors for more than 20% of work	10%
Meet or exceed workforce goals of 20% M and 6.9% W	10%

City of Rochester Location Preference: The City favors contracting with firms located in the City of Rochester and a preference will be given to Consultants located in the City, through an additional weighting of 10%. Non-local firms may wish to consider partnerships or other collaborative arrangements with local firms as a strategy to address this criterion.

Other Criteria: Other criteria may be considered and evaluated by the City if it is determined to be in the best interest of the City and the success of the Project to do so.

The selection of a Consultant is within the City's sole discretion and no reasons for rejection or acceptance of a proposal are required to be given. Although costs are an important consideration, the decision will be based on qualifications and compliance with the requirements of this RFP and not solely on cost. The City reserves the right to reject any or all proposals or to accept a proposal that does not conform to the terms set forth herein. The City further reserves the right to waive or modify minor irregularities in the proposals and negotiate with Consultants to serve the City's best interest.

## MISCELLANEOUS

The City reserves the right to amend or withdraw this RFP in the City's sole discretion, including any timeframes herein, upon notification of all Respondents as set forth above, and in such case, the City shall have no liability for any costs incurred by any Respondent.

The City may request additional information from any Respondent to assist the City in making its evaluation.

The proposal and all materials submitted with the proposal shall become property of the City and will be subject to NYS Freedom of Information Law. If any proprietary information is submitted with the proposal, it must be clearly identified and a request to keep such information confidential must be submitted.

Submission of a proposal shall constitute a binding offer by Respondent to provide the services at the prices described therein until such time as the parties enter into a PSA.

## ATTACHMENTS/LINKS

### **Required forms:**

Please note that the respondent needs to complete the following forms as part of the proposal submission. Please see Attachments A and B.

- **Attachment A: Form A - MWBE Utilization Form (to be submitted as part of the proposal)**
- **Attachment B: Workforce Staffing Plan (to be submitted as part of the proposal)**

### **Informational forms:**

The purpose of including Attachment C and the link to the following MWBE forms is to make sure the respondent understands that while this information is not required as part of the proposal, if the respondent is selected as a consultant, these forms will be required in order for the City to enter into a Professional Services Agreement with the Consultant.

- Attachment C -- DRAFT AGREEMENT FOR PROFESSIONAL SERVICES
- Other MWBE forms can be found at <http://www.cityofrochester.gov/mwbe/>  
Scroll down to the section titled "Forms for City Funded MWBE Projects" and then "Forms for City Public Works Consulting and Professional Services Consulting Contracts".
  - Form B – Intent to Perform
  - Form C – MWBE Affidavit
  - Form F – Report of Utilization
  - Form W – Payment Certification
  - Workforce Utilization Report

## Attachment A

CITY OF ROCHESTER  
MWBE FORM A  
MWBE UTILIZATION PLAN – PROFESSIONAL CONSULTANT SERVICES

**MWBE GOALS: MBE 15%, WBE 15%**

Project Name \_\_\_\_\_ Agreement # \_\_\_\_\_

Consultant \_\_\_\_\_ Total Contract Amount\* \$ \_\_\_\_\_ Original Plan ☐ Revised Plan ☐

MWBE Business Name	M B E	W B E	Scope of Work to be Performed	Projected Start Date	Projected End Date	Total Amount of MWBE Subcontract	Percentage of Total Contract*
TOTAL:							

\*Total Contract equals contract award plus all change orders

Authorized Person \_\_\_\_\_ Title \_\_\_\_\_ Phone \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_ Email \_\_\_\_\_

Approved by MWBE Officer \_\_\_\_\_ Date \_\_\_\_\_

## Attachment B

### City of Rochester Professional Consultant Services Workforce Staffing Plan

WORKFORCE STAFFING PLAN FOR PROFESSIONAL CONSULTANT SERVICES								
PROJECT NAME:				DATE:			MINORITY GOAL	FEMALE GOAL
CONSULTANT:				AGREEMENT NUMBER:			20.00%	6.90%
CLASSIFICATION	NUMBER OF EMPLOYEES WORKING ON PROJECT						MINORITY %	FEMALE %
	TOTAL		MINORITY		NON-MINORITY			
	M	F	M	F	M	F		
Officials, Administrators								
Professionals								
Technicians								
Sales Workers								
Office, Clerical								
Craft Workers								
Laborers								
Temporary, Apprentices								
Other (Specify)								
<b>TOTAL WORKFORCE</b>								

Prepared by (Signature):	Title:	Phone:
Printed Name:	Date:	Email:

Reviewed by MWBE Officer:	Date:
---------------------------	-------

## **Attachment C**

### **DRAFT AGREEMENT FOR PROFESSIONAL SERVICES**

Project Name:  
Project Code:  
Consultant Name:  
Agreement #:  
Authorizing Ordinance:

## **I N D E X**

### **ARTICLE I**

- Part 1. DESCRIPTION OF PROJECT
- Part 2. DESCRIPTION OF PROFESSIONAL SERVICES
  - Section 1.201 General
  - Section 1.202 Additional Services (if applicable)
- Part 3. SUBCONTRACTS
- Part 4. CITY RESPONSIBILITIES
- Part 5. FEES
  - Section 1.501 General
  - Section 1.502 Fee for Additional Services
- Part 6. TERM
- Part 7. REMOVAL OF PERSONNEL (if applicable)
- Part 8. AUTHORIZED AGENT
- Part 9. OWNERSHIP OF DOCUMENTS
- Part 10. CONFIDENTIALITY
  - Section 1.1001 General
  - Section 1.1002 Freedom of Information Law
- Part 11. ORGANIZATIONAL CONFLICT OF INTEREST

## ARTICLE II

- Part 1. QUALIFICATIONS, INDEMNITY AND INSURANCE
- Section 2.101 Consultant's Qualifications for Duties, Compliance and Permits
  - Section 2.102 Consultant's Liability
  - Section 2.103 Professional Liability Insurance
  - Section 2.104 General Liability Insurance
  - Section 2.105 Worker's Compensation and Disability Benefits Insurance
  - Section 2.106 Copyright or Patent Infringement
  - Section 2.107 No Individual Liability
- Part 2. SPECIFIC DESIGN RESTRICTIONS
- Section 2.201 Environmental Policy
- Part 3. EMPLOYMENT PRACTICES
- Section 2.301 Equal Employment Opportunity and MWBE and Workforce Utilization Goals
  - Section 2.302 Title VI of the Civil Rights Act of 1964
  - Section 2.303 The MacBride Principles
  - Section 2.304 Compliance with Labor Laws
  - Section 2.305 Living Wage Requirements
- Part 4. OPERATIONS
- Section 2.401 Compliance with Air and Water Acts
  - Section 2.402 Political Activity Prohibited
  - Section 2.403 Lobbying Prohibited
  - Section 2.404 Anti-Kickback Rules
  - Section 2.405 Withholding of Salaries
  - Section 2.406 Discrimination Because of Certain Labor Matters
  - Section 2.407 Status as Independent Contractor
- Part 5. DOCUMENTS
- Section 2.501 Patents and Copyrights
  - Section 2.502 Audit
  - Section 2.503 Content of Sub-Agreements
- Part 6. TERMINATION
- Section 2.601 Termination for Convenience of the City
  - Section 2.602 Termination for Default
- Part 7. GENERAL
- Section 2.701 Prohibition Against Assignment
  - Section 2.702 Compliance with All Laws

Section 2.703	Successors
Section 2.704	Interest of City and Consultant in Contract
Section 2.705	Permits, Laws and Taxes
Section 2.706	Obligations Limited to Funds Available
Section 2.707	Extent of Agreement
Section 2.708	Law and Forum
Section 2.709	No Waiver
Section 2.710	Severability



## DRAFT AGREEMENT

THIS AGREEMENT, entered into on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between the CITY OF ROCHESTER, a municipal corporation having its principal office located at CITY HALL, 30 Church Street, Rochester, New York, 14614, hereinafter referred to as the "City", and \_\_\_\_\_ with offices at \_\_\_\_\_, hereinafter referred to as the "Consultant".

### WITNESSETH:

WHEREAS, the City desires to secure the professional services of the Consultant to \_\_\_\_\_, hereinafter referred to as the Project and;

WHEREAS, the Consultant covenants that it has the personnel, skills and expertise required and wishes to undertake the Project.

NOW THEREFORE, the City and the Consultant do mutually agree, in consideration of the covenants, terms and conditions contained herein, as follows:

### ARTICLE I, Part 1. Description of Project

#### Section 1.101 General Description

### ARTICLE I, Part 2. Description of Professional Services

#### Section 1.201 General

The Consultant shall provide the following services:

A.

- B. The Consultant is to have on its staff and is to retain during the performance of its services all appropriate professional personnel necessary to completely and accurately perform the work and services required. The Consultant shall provide a list of its employees assigned to the project which provides the employee's name and title prior to the start of work. The Consultant shall notify the City prior to changing project personnel. No changes in project managers will be made without approval of the City.
- C. The Consultant shall maintain an up-to-date, orderly, assembled file of Project notes and records. Notes shall include correspondence, calculations, documentation, references and other material necessary for the completion of the Project.
- D. The Consultant is responsible for the professional quality, technical accuracy, timely completion and appropriate coordination of all designs, drawings, specifications, testing, reports and other services furnished under this Agreement. The Consultant bears all responsibility for any errors, omissions or other deficiencies in the Consultant's designs, drawings, specifications, reports and other services and shall correct or revise any such errors, omissions or other deficiencies without additional compensation.
- E. The Consultant's obligations under this Section are in addition to the Consultant's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that the City may have against the Consultant for faulty materials, equipment or work.
- F. The Consultant shall furnish promptly all equipment, labor and materials needed to perform in a safe and convenient manner, such inspections as the City requires.
- H. The Consultant shall keep the City informed of the progress of the work so that the City may inspect the Consultant's work as determined necessary by the City. In particular, the Consultant shall provide the City with at least forty-eight (48) hours notice prior to performing work which would prevent proper inspection of previously completed work.
- I. The Consultant shall meet with the City at the City's request to discuss the Assessment results and recommendations as may be deemed necessary by the City.

ARTICLE I, Part 3. Subcontracts

All services to be performed under this Agreement shall be performed with the Consultant's own employees, unless the City agrees that the Consultant may subcontract such services. Copies of all proposed Agreements between the Consultant and subcontractors shall be submitted to the City along with a statement of the subcontractor's qualifications. Such Agreements shall be approved by the City in writing prior to initiation of work. All subcontracts under this Agreement are subject to all applicable provisions of this Agreement unless otherwise directed in writing by the City. The Consultant is responsible for the completion of all services under this Agreement in an acceptable and timely manner, including any services performed by a subcontractor, supplier or other party with whom the Consultant has a contract.

ARTICLE I, Part 4. City Responsibilities

The City shall:

- A. Provide as complete information as is reasonably possible as to its requirements for the Project to the Consultant.
- B. Assist the Consultant by making available to the Consultant any information pertinent to the Project, including previous reports and any other relevant data.
- C. Examine all studies, reports, sketches, estimates, drawings, specifications, proposals and other documents presented to the City by the Consultant for review and render decisions pertaining thereto within a reasonable period of time, so as not to delay the work of the Consultant.

- D. Designate a representative (Authorized Agent) to act as liaison between the City and the Consultant. The Authorized Agent will have the authority and responsibility to transmit instructions and to receive information with respect to the City policies and pertinent to the work covered by this Agreement, except as otherwise limited by Code or Charter of the City.
- E. Give written notice to the Consultant where the City observes or otherwise becomes aware of any default in the Consultant's performance hereunder or where the City does not concur with the design or other recommendations of the Consultant.
- F. Obtain any required easements with the assistance of the Consultant.
- G. Obtain or provide in a timely manner permission for the Consultant to enter upon any sites, buildings, and facilities as deemed necessary by the Consultant to perform the services required pursuant to this Agreement.

#### ARTICLE I, Part 5. Fees

##### Section 1.501 General

- A. In no event whatsoever shall the total fee payable to the Consultant pursuant to this Agreement, including all costs and disbursements whatsoever, exceed \$ .
- B. The Consultant shall have the right to bill the City for services performed and not already billed on a (monthly basis) (upon completion of all work required under this Agreement) (upon completion of ).
- C. Payment Request  
  
The Consultant shall submit an invoice and any other supporting documentation in the manner prescribed by the City at a minimum of once every ninety (90) days during the term of the agreement unless a different schedule is approved by the City.

#### ARTICLE I, Part 6. Term

This Agreement shall commence (upon execution by the parties) (on DATE) and shall terminate (one year from such date) ( on DATE).

#### ARTICLE I, Part 7. Removal of Personnel

All personnel assigned by the Consultant shall be subject to the approval of the City and be required to cooperate with the City project personnel. In the event that the Consultant's personnel fail to cooperate or perform their assigned tasks in a reasonable manner as determined by the City, the City may require the Consultant to replace such personnel.

#### ARTICLE I, Part 8. Authorized Agent

A. The City hereby designates the:

[Title]

[Department]

30 Church Street

Rochester, New York 14614-1278

B. The Consultant hereby designates:

or an authorized representative in case of absence, as Authorized Agents for the receipt of all notices, demands, vouchers, orders, permissions, directions, and other communications pursuant to this Agreement, if dispatched by registered or certified mail, postage prepaid, or delivered personally to the Authorized Agents designated herein.

The parties reserve the right to designate other or additional Authorized Agents upon written notice to the other.

#### ARTICLE I, Part 9. Ownership of Documents

All original notes, drawings, specifications and survey maps prepared by the Consultant under this Agreement, upon completion of the work required herein, or upon acceptance by the City of each individual Assessment report will become the property of the City and shall be delivered to the City's Authorized Agent. The Consultant may provide a complete reproducible set of drawings, specifications, survey maps and all other documents in lieu of the originals.

#### ARTICLE I, Part 10. Confidentiality

##### Section 1.1001 General

The Consultant agrees that any and all data, analyses, materials or other information, oral or written, made available to the Consultant with respect to this Agreement, and any and all data, analyses, materials, reports or other information, oral or written, prepared by the Consultant with respect to this Agreement shall, except for information which has been or is publicly available, be treated as confidential; and shall not be utilized, released, published or disclosed by the Consultant at any time for any purpose whatsoever other than to provide consultation or other services to the City.

##### Section 1.1002 Freedom of Information Law

Disclosures required by New York's Freedom of Information Law ("FOIL") shall not be considered a breach of any confidentiality provisions in this Agreement. Should Consultant provide the City with any records it deems confidential and exempt from FOIL, Consultant shall clearly mark such portions of those records as confidential and exempt from FOIL disclosure. Upon any request for disclosure of information so marked, the City will inform Consultant of the request and give Consultant ten (10) business days to submit a written statement of necessity for exempting the records from disclosure pursuant to New York Public Officers Law 89(5). As required by the Public Officers Law, the City will issue a determination as to disclosure within seven (7) business days. If the City determines that the records must be disclosed, Consultant may appeal the City's determination within seven (7) business days. Thereafter, the City shall respond to Consultant's appeal within ten (10) business days. If the City issues an adverse determination, Consultant may appeal the decision within fifteen (15) days of service by commencing an Article Seventy-Eight (78) proceeding under New York's Civil Practice Law and Rules.

#### ARTICLE I, Part 11. Organizational Conflict of Interest

- A. The Consultant warrants that to the best of the Consultant's knowledge and belief, there are not relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that the Consultant has disclosed all such relevant information.
- B. An organizational conflict of interest exists when the Consultant performs or agrees to perform services for another party that could foreseeable implicate the City as a potentially responsible party in an environmental enforcement action or claim against the City or otherwise increase the potential liability of the City.
- C. The Consultant agrees that if an actual or potential organizational conflict of interest is discovered, the Consultant will make a full disclosure as soon as possible in writing to the City. This disclosure shall include a description of actions which the Consultant has taken or proposed to take, after consultation with the City, to avoid, mitigate, or neutralize the actual or potential conflict.

- D. The City may terminate this Agreement in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Consultant was aware of a potential organizational conflict of interest prior to award, or discovered an actual or potential conflict after award and did not disclose it, or misrepresented relevant information to the City, the City may terminate the Agreement, debar the Consultant from contracting with the City, or pursue such other remedies as may be permitted by law or this Agreement. In such event, termination of this Agreement shall be deemed a termination for default pursuant to Section 2.602.
- E. The Consultant further agrees to insert in any subcontract hereunder, provisions which shall conform to the language of this Article.



## ARTICLE II

### ARTICLE II, Part 1. Qualifications, Indemnity and Insurance

#### Section 2.101 Consultant's Qualifications for Duties, Compliance and Permits

- A. The Consultant hereby agrees that it has, or will have, on its staff and will retain during the performance of this service under this Agreement, all appropriate professional personnel necessary to completely and accurately perform the work and services under this Agreement.
- B. The Consultant further agrees that the design of architectural or engineering features of the work shall be accomplished by professionals licensed to practice in New York State.
- C. The Consultant further agrees to insure that its subcontractors, agents or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

#### Section 2.102 Consultant's Liability

The Consultant hereby agrees to defend, indemnify and save harmless the City of Rochester against any and all liability, loss, damage, detriment, suit, claim, demand, cost, charge, attorney's fees and expenses of whatever kind or nature which the City may directly or indirectly incur, suffer or be required to pay by reason or in consequence of the carrying out of any of the provisions or requirements of this Agreement, where such loss or expense is incurred directly or indirectly by the City, its employees, subcontractors or agents, as a result of the negligent act or omission, breach or fault of the Consultant, its employees, agents or subcontractors. If a claim or action is made or brought against the City and for which the Consultant may be responsible hereunder in whole or in part,

then the Consultant shall be notified and shall be required to handle or participate in the handling of the portion of the claim for which it may be responsible as a result of this section.

#### Section 2.103      Professional Liability Insurance

The Consultant shall procure at its own expense professional liability insurance for services to be performed pursuant to this Agreement, insuring the Consultant against malpractice or errors and omissions of the Consultant, in the amount of One Million Dollars. The Consultant shall provide the City with a certificate of insurance from an authorized representative of a financially responsible insurance company evidencing that such an insurance policy is in force. The certificate shall contain a thirty (30) day cancellation clause which shall provide that the City shall be notified not less than thirty (30) days prior to the cancellation, assignment or change of the insurance policy. The Consultant shall also give at least thirty (30) days notice to the City of such cancellation, amendment or change, and of any lapse of insurance coverage under this Agreement.

#### Section 2.104      General Liability Insurance

The Consultant shall obtain at its own expense general liability insurance for protection against claims of personal injury, including death, or damage to property, arising out of the Project. The amount of said insurance coverage shall be in the amount Two Million Dollars if said insurance is a "Defense within Limits" policy under which all claim expenses are included within both the applicable limit of liability and self-insured retention. Otherwise, the insurance coverage shall be in the amount of One Million Dollars. Said insurance shall be issued by a reputable insurance company, authorized to do business in the State of New York. Said insurance shall also name the City of Rochester as an insured and copies of the policy endorsements reflecting the same shall be provided. The Consultant shall provide the City with a certificate of insurance from an authorized representative of a financially responsible insurance company evidencing that such an insurance policy is in force. Furthermore, the Consultant shall provide a listing of any and all exclusions under said policy. The insurance

shall stipulate that, in the event of cancellation or modification the insurer shall provide the City with at least thirty (30) days written notice of such cancellation or modification. In no event shall such liability insurance exclude from coverage any municipal operations or municipal property related to this Agreement.

#### Section 2.105            Workers' Compensation and Disability Benefits Insurance

This Agreement shall be void and of no effect unless the Consultant shall require all the Consultant's subcontractors to keep insured, during the life of this Agreement, all employees of said subcontractors as are required to be insured under the provisions of the Workers' Compensation Law of the State of New York. In the event the Consultant hires its own employees to do any work called for by this Agreement, then the Consultant agrees to so insure its own employees. The Consultant shall provide proof to the City, duly subscribed by an insurance carrier, that such Workers' Compensation and Disability Benefits coverage has been secured. In the alternative, Consultant shall provide proof of self-insurance or shall establish that Workers' Compensation and/or Disability Benefits coverage is not required by submitting a completed New York State Workers' Compensation Board's form WC/DB-100.

#### Section 2.106            Copyright or Patent Infringement

The Consultant shall defend actions or claims charging infringement of any copyright or patent by reason of the use of adoption of any designs, drawings or specifications supplied by it, and it shall hold harmless the City from loss or damage resulting therefrom, providing however, that the City within ten days after receipt of any notice of infringement or of summons in any action therefor shall have forwarded the same to the Consultant in writing.

#### Section 2.107            No Individual Liability

Nothing contained in the Agreement shall be construed as creating any personal liability on the part of any officer or agent of the City.

## ARTICLE II, Part 2. Specific Design Restrictions

### Section 2.201 Environmental Policy

The City has an obligation to assess the environmental impact of the Project and to prepare any necessary state, federal, and/or local environmental impact statements under the State Environmental Quality Review Act and the national Environmental Protection Act. The City wishes to enhance the environment by minimizing environmental degradation and by maximizing the Project benefits.

The Consultant, therefore, shall assist the City in determining whether environmental impact statements ("EIS") should be prepared and shall assist the City or the City's Environmental Specialist in preparing any necessary EIS. The Consultant shall not be required to prepare an EIS, unless specifically required by Article I of this Agreement.

## ARTICLE II, Part 3. Employment Practices

### Section 2.301 Equal Employment Opportunity and MWBE and Workforce Utilization Goals

#### A. General Policy

The City of Rochester, New York reaffirms its policy of Equal Opportunity and its commitment to require all contractors, lessors, vendors and suppliers doing business with the City to follow a policy of Equal Employment Opportunity, in accordance with the requirements set forth herein. The City further does not discriminate on the basis of handicap status in admission, or access to, or treatment or employment in its programs and activities. The City is including these policy statements in

all bid documents, contracts, and leases. Contractors, lessors, vendors and suppliers shall agree to comply with State and Federal Equal Opportunity laws and regulations and shall submit documentation regarding Equal Opportunity upon the City's request.

B. Definitions

MINORITY GROUP PERSONS - shall mean a person of Black, Hispanic, Asian, Pacific Islander, American Indian, or Alaskan Native ethnic or racial origin and identity.

C. Compliance

The Consultant shall comply with all of the following provisions of this Equal Opportunity Requirement:

1. The Consultant agrees that he will not discriminate against any employee for employment because of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status in the performance of services or programs pursuant to this Agreement, or in employment for the performance of such services or programs, against any person who is qualified and available to perform the work in which the employment relates. The Consultant agrees that in hiring employees and treating employees performing work under this Agreement or any subcontract hereunder, the Consultant, and its subcontractors, if any, shall not, by reason of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability or marital status discriminate against any person who is qualified and available to perform the work to which the employment relates. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that applicants are hired and that employees are treated during their employment, without regard to their of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status. Such actions shall include, but not be limited to the following: employment, upgrading, demotions or transfers, recruitment and recruitment advertising, layoffs, terminations,

rates of pay and other forms of compensation, and selection for training, including apprenticeship.

2. The Consultant agrees that its employment practices shall comply with the provisions of Chapter 63 of the Rochester Municipal Code, which restricts inquiries regarding or pertaining to an applicant's prior criminal conviction in any initial employment application.
3. If the Consultant is found guilty of discrimination in employment on the grounds of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status by any court or administrative agency that has jurisdiction pursuant to any State or Federal Equal Opportunity laws or regulations, such determination will be deemed to be a breach of contract, and this Agreement will be terminated in whole or part without any penalty or damages to the City on account of such cancellation or termination and the Consultant shall be disqualified from thereafter selling to, submitting bids to, or receiving awards of contract with the City of Rochester for goods, work, or services until such time as the Consultant can demonstrate its compliance with this policy and all applicable Federal and State Equal Opportunity laws and regulations.
4. The Consultant shall cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

D. MWBE and Workforce Utilization Goals

The City of Rochester has established a policy to promote the growth and development of Minority and Women Business Enterprises (MWBE) and to improve employment opportunities for minorities and women and has adopted MWBE goals and minority workforce participation goals that apply to public works and professional services consulting agreements with a maximum compensation exceeding \$10,000 pursuant to Ordinance No. 2018-54.

Ordinance No. 2018-54 established the goal that MWBE's receive 30% of the total annual contract awards with aggregate minority and women award goals of 15% each. Ordinance No. 2018-54 further established annual aggregate workforce goals of 20% Minority and 6.9% Women.

The Consultant shall submit a workforce staffing plan, which, when reviewed by the City's MWBE Officer, shall be incorporated into this Agreement as Exhibit A, detailing the percentage of the workforce utilized to perform the work of this agreement who will be either minority or women, including both the Consultant's workforce and that of any subcontractors who will be utilized. Consultant shall submit workforce utilization reports on the City's forms with each invoice or as otherwise requested by the MWBE Officer. The Consultant understands and accepts that the calculated percentages of workforce utilization shall be based on actual hours worked and billed over the term of the project. The final determination of a workforce goals accomplished during the contract shall be based on hours reported in the workforce utilization reports.

The Consultant shall submit an MWBE Utilization Plan with respect to any subcontractors or suppliers used to perform the services under this Agreement, which, when approved by the City's MWBE Officer, shall be incorporated into this Agreement as Exhibit B. Consultant shall submit MWBE utilization and subcontractor/supplier payment certification on the City's forms with each invoice or as otherwise requested by the MWBE Officer.

During the term of the Agreement, the Consultant shall notify the City if a change occurs that will result in a significant (5% or more) increase or decrease in the workforce staffing plan and/or MWBE utilization plan goals incorporated as Exhibit A and/or Exhibit B of this Agreement. A revised workforce staffing plan and/or MWBE utilization plan must be approved by the MWBE Officer. Once signed by the Consultant and the MWBE Officer, such revised plan(s) shall be incorporated into the Agreement as an amendment pursuant to Section 2.707.

Consultant's failure to submit MWBE and subcontractor/supplier payment certification forms, if required, and the workforce utilization reports shall constitute a default in the performance of this Agreement. Failure to meet the goals stated in the most recent workforce staffing plan and/or the MWBE utilization plan incorporated into the Agreement may result in disqualification from award of future contracts with the City.

#### Section 2.302            Title VI of the Civil Rights Act of 1964

The City of Rochester hereby gives public notice that it is Municipality's policy to assure full compliance with Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, and related statutes and regulations in all programs and activities. Title VI requires that no person in the United States of America shall, on the grounds of race, color, gender, or national origin be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which Municipality receives federal financial assistance. Any person who believes they have been aggrieved by an unlawful discriminatory practice under Title VI has a right to file a formal complaint with Municipality. Any such complaint shall be in writing and filed with the City Title VI Coordinator within one hundred eighty (180) days following the date of the alleged discriminatory occurrence. Title VI Discrimination Complaint Forms may be obtained from the City at no cost to the complainant, or on the City's website at [www.cityofrochester.gov](http://www.cityofrochester.gov), or by calling (585) 428-6185.

#### Section 2.303            The MacBride Principles

The Consultant agrees that it will observe Ordinance No. 88-19 of the City of Rochester, which condemns religious discrimination in Northern Ireland and requires persons contracting to provide goods and services to the City to comply with the MacBride principles. A copy of the MacBride principles is on file in the Office of the Director of Finance.



## Section 2.304 Compliance with Labor Laws

The Consultant specifically agrees to comply with the labor law requirements of Articles 8 and 9 of the Labor Law of the State of New York, and, more specifically, with the requirements of Sections 220, 220-a, 220-d and 220-e of the Labor Law. These provisions require the payment of prevailing wages and supplements to, the verification of payment of wages of, and require preference in the employment of New York residents, and prohibit discrimination based on race, creed, color, sex, national origin, or age, and prohibit the permitting or requiring of more than eight hours per day and forty hours per week from laborers, mechanics, or workers on a public works construction project. The foregoing requirements do not generally apply to professional staff, draftsmen, or clerical help or most other employees of an engineer or architect who is performing design, research, or inspection work only. The Consultant shall, however, comply with all state, federal and local non-discrimination and equal employment opportunity laws and rules and will be subject under this Agreement to fines, penalties and contract termination when the City reasonably determines that the Consultant has unlawfully discriminated because of the race, color, creed, national origin, sex or age of any applicant for employment or any employees.

## Section 2.305 Living Wage Requirements

### A. Applicability of Living Wage Requirements

This section shall apply and the Consultant shall comply with the requirements of Section 8A-18 of the Municipal Code of the City of Rochester, known as the "Rochester Living Wage Ordinance", in the event that payments by the City to the Consultant under this Agreement shall exceed fifty thousand dollars (\$50,000) during a period of one year. If this Agreement is amended to increase the amount payable hereunder to more than fifty thousand dollars (\$50,000) during a period of one year, then any such amendment shall be subject to Section 8A-18.

B. Compliance

The Consultant shall pay no less than a Living Wage to any part-time or full-time Covered Employee, as that term is defined in Section 8A-18B, who directly expends his or her time on this Agreement, for the time said person actually spends on this Agreement. Living Wage, as set forth in this Agreement, shall be the hourly amount set forth in Section 8A-18(C)(2), and any adjustments thereto, which shall be made on July 1 of each year and shall be made available in the Office of the City Clerk and on the City's website, at [www.cityofrochester.gov](http://www.cityofrochester.gov). Consultant shall also comply with all other provisions of Section 8A-18, including but not limited to all reporting, posting and notification requirements and shall be subject to any compliance, sanction and enforcement provisions set forth therein.

C. Exemption

This section shall not apply to any of Consultant's employees who are compensated in accordance with the terms of a collective bargaining agreement.

ARTICLE II, Part 4. Operations

Section 2.401 Compliance with Air and Water Acts

The Consultant and any and all subcontractors agree as follows:

- A. The Consultant, and its subcontractors warrant that any facility to be utilized in the performance of any non-exempt contract or subcontract is not listed on the list of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.

- B. The Consultant promises to comply with all of the requirements of Sections 144 of the Clean Air Act, as amended (47 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended (33 USC 1318) relating to the inspection, monitoring, entry, reports and information as well as all other requirements specified in Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- C. A condition for the award of the Agreement is that prompt notice will be given to the City of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the Agreement is under consideration to be listed on the EPA list of Violating Facilities.
- D. The Consultant warrants to the City that it has not been convicted under Section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

#### Section 2.402 Political Activity Prohibited

None of the funds, materials, property, or services provided directly or indirectly under this Agreement shall be used during the performance of the Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

#### Section 2.403 Lobbying Prohibited

None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the United States Congress, the Legislature of the State of New York or the Council of the City of Rochester.

#### Section 2.404          Anti-Kickback Rules

Salaries of employees performing work under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions that are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 108; title 18 U.S.C., section 874; and title 40 U.S.C., section 276c). The Consultant shall comply with applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this Agreement to insure compliance by subcontractors with such regulations and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

#### Section 2.405          Withholding of Salaries

If, in the performance of this Agreement, there is notice to the City of any underpayment of salaries by the Consultant or by any subcontractor thereunder, the City shall withhold from the Consultant out of payments due to it an amount sufficient to pay the employees underpaid the difference between the salaries required hereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed by the City for and on account of the Consultant or subcontractor to the respective employees to whom they are due.

#### Section 2.406          Discrimination Because of Certain Labor Matters

No person employed on the work covered by this Agreement shall be discharged or in any way discriminated against because the person has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify at any proceeding relating to the labor standards applicable hereunder to that person's employer.

## Section 2.407            Status as Independent Contractor

The Consultant, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself in a manner consistent with such status, that it will neither hold itself nor its employees out as, nor claim to be an officer or employee of the City by reason hereof, and that it and its employees will not by reason hereof, make any claim, demand or application for any right or privilege applicable to an officer or employee of the City, including but not limited to Workers' Compensation coverage, unemployment insurance benefits, social security coverage, and retirement membership or credit.

## ARTICLE II, Part 5. Documents

### Section 2.501            Patents and Copyrights

The Consultant agrees that, in the event it, or any of its employees' develop any material for which a copyright can be obtained which material was developed as a result of or in connection with the work required pursuant to this Agreement, the City shall own the copyright to any copyrightable material and may, in its discretion, grant a royalty-free, non-exclusive license to use, reproduce and distribute such copyrightable material. The Consultant further agrees that in the event it, or any of its employees, develops any process, machinery or product for which a patent would be obtainable, the Consultant shall provide the necessary information to the City, so that the City can apply for such patent at its own expense. Such patent shall become the property of the City; provided, however, that the City may, in its discretion, may grant to Consultant a royalty-free, non-exclusive license to produce or reproduce such patented product. The benefits of either a patent or a copyright shall also inure to any public agency which finances, in whole or in part, this project and such agency shall receive a royalty-free, non-exclusive license to use, reproduce, manufacture and distribute the product or mater which has been patented or copyrighted.

### Section 2.502            Audit

The Consultant agrees to maintain sufficient on-site records and information necessary for the documentation of any and all facets of program operation specified by this Agreement. The Consultant shall maintain all books, documents, papers and other evidence pertinent to the performance of work under this Agreement in accordance with generally acceptable accounting principles, and 40 CFR Part 30 in effect during the term of this Agreement. The Consultant agrees to permit on-site inspection and auditing of all records, books, papers and documents associated with this Agreement by authorized representatives of the City and further agrees to provide necessary staff support to the performance of such audit. The Consultant agrees to maintain for a period of six (6) consecutive years following termination of this Agreement any and all records, reports and other documentation arising from the performance of this Agreement; however, this period shall be extended beyond six years for any and all records and information pertaining to unresolved questions, which have been brought to the Consultant's attention by written notice by the City. The Consultant agrees to furnish to the City data to include but not be limited to, intake records, status change notices, termination notices, and follow-up records. Said reports will be submitted periodically as required by the City.

#### Section 2.503           Content of Sub-Agreements

The Consultant agrees that all sub-agreements authorized by this Agreement shall be in written form. The Consultant shall require all subcontractors to comply with any of the following sections which may be in this Agreement: "Equal Employment Opportunity; Affirmative Action and Employment of Local Labor; Compliance with Labor Laws; Certifications Regarding Conflicts of Interest; Anti-Kickback Rules; Interest of City and Contractor in Contract." It is the purpose of this section to insure that all Agreements obligate all parties performing work under this Agreement to comply with necessary governmental programs and policies. The City may require the Consultant to submit copies of such sub-agreements to the City. If such copies are not submitted upon request, the City may have the right to withhold any and all payments to the Consultant to those items of work which have not complied with this section.

#### ARTICLE II, Part 6. Termination

Section 2.601          Termination for Convenience of the City

- A.     This Agreement may be terminated by the City in accordance with this section in whole, or from time to time, in part, whenever for any reason, the City shall determine that such termination is in the best interest of the City. Any such termination shall be effective upon written notice to the Consultant. However, no such termination shall relieve the Consultant of any outstanding duties imposed by the Agreement, including the requirement to hold the City harmless and to maintain insurance coverage insuring against loss arising out of the Project.
  
- B.     If the Agreement is so terminated the City may take over the work and services and prosecute the same to completion by contract or otherwise. The Consultant, upon such termination, shall transfer title, and in the manner directed by the City, shall deliver to the City the completed or partially completed, plans, drawings information, other property and records of work being performed, which, if this Agreement had been completed, would be required to be furnished to the City.
  
- C.     After receipt of written notice of termination, the Consultant shall promptly submit to the City its termination claim in a form acceptable to the City. Such claim shall in no event be submitted later than one year from the effective date of termination.
  
- D.     In the event that the parties cannot agree, in whole or in part, as to the amount due by reason of the termination of the Agreement pursuant to this clause, the City shall pay the Consultant the amount determined as the total of the following:
  - 1.     The cost of all work performed prior to the effective date of termination.

2. The cost of settling and paying claims arising out of and as a direct result of the termination;
3. A sum as profit on subdivision 1. above, determined to be fair and reasonable, provided however, that if the Consultant would have sustained a loss on the entire Agreement had it been completed, no profit shall be included or allowed under this subdivision 3., and an appropriate adjustment shall be made reducing the amount of settlement to reflect the indicated rate of loss. The total sum to be paid under this section shall not exceed the total price of this Agreement specified hereinabove, reduced by the amount of payments otherwise made, and further secured by the value of work remaining incomplete at the time of the termination of this Agreement.

#### Section 2.602 Termination for Default

- A. The performance of work under this Agreement may be terminated by the City in accordance with this clause in whole, or, from time to time, in part, whenever the Consultant shall default in performance of this Agreement in accordance with its terms (including in the term "default" any failure by the Consultant to make progress in the prosecution of the work hereunder which endangers such performance) and shall fail to cure diligently such default within a period of ten days or (or such longer period as the City may allow) after delivery by the City of a notice specifying the default.
- B. If this Agreement is to be terminated, the City may take over the work and services and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the City for any excess cost occasioned thereby.
- C. The total fee payable shall be such proportionate part of the fee as the value of the actual work completed and delivered bears to the value of the work required or contemplated by this Agreement.



- D. This Agreement may not be so terminated if the failure to perform arises from unforeseeable causes beyond the control and without the fault or negligence of the Consultant.
- E. If, after notice of termination of this Agreement under the provisions of this section, it is determined for any reason that the Consultant was not in default or that the default was excusable the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause of this Agreement entitled "Termination for the Convenience of the City."
- F. The rights and remedies of the City provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

## ARTICLE II, Part 7. General

### Section 2.701 Prohibition Against Assignment

The Consultant agrees that it is prohibited from assigning or otherwise disposing of this Agreement or any of its contents, or of its right, title or interest therein, or of its power to execute such contract to any other person or corporation without the previous consent in writing of the City.

### Section 2.702 Compliance with All Laws

The Consultant agrees that during the performance of the work required pursuant to this Agreement, the Consultant, and all employees working under its direction, shall strictly comply with all local, state or federal laws, ordinances, rules or

regulations controlling or limiting in any way their actions during their said performance of the work required by this Agreement. Furthermore, each and every provision of law, and contractual clause required by law to be inserted in this Agreement shall be deemed to be inserted herein. If, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon the application of either party this Agreement shall be forthwith physically amended to make such insertion or correction.

#### Section 2.703          Successors

The City and the Consultant each bind their successors, executors, administrators and assigns in respect of all covenants of this Agreement.

#### Section 2.704          Interest of City and Consultant in Contract

The City and the Consultant agree that no member, officer, or employee of the City or of the Consultant or assignees agents shall have any interest, direct or indirect, in any contract or subcontract or the proceeds thereof, for work to be performed in connection with the program assisted under the Agreement.

#### Section 2.705          Permits, Laws and Taxes

- A.     In the event that services performed by the Consultant for the City are subject to taxation under Article 28 of the Tax Law (sales and compensating use tax) the Consultant shall receive from the City the material necessary to obtain a tax exempt certificate upon written request.
- B.     The Consultant shall pay all taxes, applicable to the work and materials supplied under this Agreement, it being understood that in no case shall any such tax be borne by the City, except as provided in subparagraph A. above.

#### Section 2.706            Obligations Limited to Funds Available

The parties specifically agree that the Consultant's duty to perform work under this Agreement and the City's obligation to pay for that work, including any out-of-pocket and subcontracting expenses of the Consultant, shall be limited to the amount of money actually appropriated by the City Council and encumbered (i.e., certified as being available) for this Project by the City Director of Finance (or his authorized deputy). This provision shall limit the parties' obligation to perform even though this Agreement may provide for the payment of a fee greater than the appropriated and encumbered amount.

#### Section 2.707            Extent of Agreement

This Agreement constitutes the entire and integrated Agreement between and among the parties hereto and supersedes any and all prior negotiations, Agreements, and conditions, whether written or oral. Any modification or amendment to this Agreement shall be void unless it is in writing and subscribed by the party to be charged or by its authorized agent.

#### Section 2.708            Law and Forum

This Agreement shall be governed by and under the laws of the State of New York and the Charter of the City of Rochester. The parties further agree that Supreme Court of the State of New York, held in and for the County of Monroe shall be the forum to resolve disputes arising out of either this Agreement or work performed according thereto. The parties waive all other venue or forum selections. The parties may agree between themselves on alternative forums.

#### Section 2.709            No Waiver

In the event that the terms and conditions of this Agreement are not strictly enforced by the City, such non-enforcement shall not act as or be deemed to act as a waiver or modification of this Agreement, nor shall such non-enforcement prevent the City from enforcing each and every term of this Agreement thereafter.

Section 2.710      Severability

If any provision of this Agreement is held invalid by a court of law, the remainder of this Agreement shall not be affected thereby, if such remainder would then continue to conform to the laws of the State of New York.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the day first written above.

THE CITY OF ROCHESTER

BY: \_\_\_\_\_

Lovely A. Warren, Mayor

CONSULTANT

BY: \_\_\_\_\_

Name:

STATE OF NEW YORK

COUNTY OF MONROE

On this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the subscriber, personally came LOVELY A. WARREN to me known, who being by me duly sworn, did depose and say that she resides in the City of Rochester, that she is the Mayor of the City of Rochester, the municipal corporation described in the above Agreement; that she signed her name thereto by authority of Ordinance No. \_\_\_\_.

\_\_\_\_\_

Notary Public

STATE OF NEW YORK

COUNTY OF MONROE

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_

Notary Public

